

**MINUTES
of the
FOURTH MEETING
of the
WATER AND NATURAL RESOURCES COMMITTEE**

**October 6-7, 2014
New Mexico Highlands University Student Union Building
Las Vegas**

The fourth meeting of the Water and Natural Resources Committee (WNRC) was called to order on Monday, October 6, 2014, at 9:10 a.m. by Representative George Dodge, Jr., chair, in the New Mexico Highlands University (NMHU) Student Union Building in Las Vegas.

Present

Rep. George Dodge, Jr., Chair
Sen. Phil A. Griego, Vice Chair
Rep. Paul C. Bandy
Sen. Joseph Cervantes
Rep. Larry A. Larrañaga
Sen. Sander Rue
Sen. Benny Shendo, Jr.
Rep. Mimi Stewart
Rep. Don L. Tripp
Sen. Peter Wirth
Sen. Pat Woods

Advisory Members

Sen. Carlos R. Cisneros
Sen. Lee S. Cotter
Rep. Anna M. Crook
Sen. Ron Griggs
Rep. Rodolpho "Rudy" S. Martinez
Sen. Cisco McSorley
Sen. Gerald Ortiz y Pino
Sen. Nancy Rodriguez
Rep. Tomás E. Salazar
Sen. John Arthur Smith (October 6)
Rep. Bob Wooley

Absent

Rep. Phillip M. Archuleta
Rep. Brian F. Egolf, Jr.
Rep. William "Bill" J. Gray
Rep. Dona G. Irwin
Rep. Emily Kane
Sen. George K. Munoz
Sen. Cliff R. Pirtle
Rep. James R.J. Strickler

Rep. Cathrynn N. Brown
Sen. Pete Campos
Rep. Gail Chasey
Rep. Sharon Clahchischilliage
Rep. Nora Espinoza
Rep. Candy Spence Ezzell
Sen. Stuart Ingle
Sen. Gay G. Kernan
Rep. James Roger Madalena
Rep. W. Ken Martinez
Sen. Steven P. Neville
Sen. Mary Kay Papen
Rep. Vickie Perea
Sen. John C. Ryan
Rep. Henry Kiki Saavedra
Sen. William E. Sharer
Rep. Jeff Steinborn

Guest Legislator

Rep. Carl Trujillo (October 6)

(Attendance dates are noted for those members not present for the entire meeting.)

Staff

Jon Boller, Legislative Council Service (LCS)

Gordon Meeks, LCS

Jeret Fleetwood, LCS

Guests

The guest list is in the original meeting file.

Handouts

Handouts and other written testimony can be found in the meeting file or on the New Mexico Legislature's web site at www.nmlegis.gov.

Monday, October 6**Call to Order and Introductions**

Representative Dodge began by having members of the committee and staff introduce themselves.

Opening Remarks and Welcome

Dr. James Fries, president of NMHU, provided the committee with an overview of current projects at the school. He noted that the committee meeting was being held in the recently completed Student Union Building and pointed out some of the new building's features, such as geothermal heat pumps. Dr. Fries also discussed NMHU's students, noting that the school has an especially high percentage of its overall student body seeking graduate-level degrees.

Grasshopper Population in New Mexico

Senator Woods discussed the recent infestation of grasshoppers in eastern New Mexico. He showed several pictures of the damage that grasshoppers have caused and noted that in Curry County, the grasshopper population was measured at 38 grasshoppers per square yard in some fields.

Acequia Commission and New Mexico Acequia Association

Ralph Vigil, chair, Acequia Commission, explained that the commission was established by statute to advise the governor and legislature on acequia issues. He pointed out that while the commission works with the New Mexico Acequia Association, they are separate entities. Mr. Vigil said that the commission is administratively attached to the Department of Finance and Administration (DFA), but the DFA has cut back its support for the commission and provides no

office space or information technology support. He also noted that the DFA will not pay his per diem and mileage for attending the WNRC meeting.

Mr. Vigil went on to discuss the challenges faced by the commission and by acequias in general. For example, he said, funding for projects has been inexplicably delayed, technological support denied and per diem and mileage reimbursement issues raised. Also, Mr. Vigil said, federal issues, such as United States Forest Service denial of permits for necessary acequia infrastructure improvements and general land management issues, only add to problems faced by acequias. He pointed out that poor federal land management actually invited catastrophic wildfires. Mr. Vigil asked the legislature to support acequias by recognizing the importance of traditional agricultural practices, protecting the water rights of acequia users and appropriating funds to help the commission function as intended.

Paula Garcia, executive director, New Mexico Acequia Association, began by providing the committee with a brief history and overview of the association, noting that it has operated for 25 years and has more than 400 members. Ms. Garcia said that the association focuses primarily on outreach and education. She also highlighted some of the challenges facing acequias, particularly a lack of sufficient resources to perform basic functions, such as updates to bylaws, help with budgets and audits and other issues in critical areas throughout New Mexico.

Ms. Garcia also noted that the New Mexico Irrigation Works Construction Fund (NMIWCF), which helps fund acequia infrastructure needs, is being depleted because the legislature has been using the fund to cover the costs of operations of the Office of the State Engineer (OSE) and Interstate Stream Commission (ISC).

Finally, Ms. Garcia discussed water management issues, including negotiation of shortage-sharing agreements, the ability of acequia users to approve water rights transfers and water leasing programs, the use of meters to measure water use and how counties are valuing agricultural lands.

Questions and comments from the committee included the following:

- the importance of preserving traditional agricultural ways of life, especially acequias;
- Acequia Commission funding levels returned to pre-recession levels in fiscal year 2015;
- Abby Lewis of the Attorney General's Office explained that a difference exists between the per diem and mileage statute and DFA rules regarding per diem and mileage in that the DFA requires 11 hours of work before it will pay per diem and mileage for members to attend out-of-town meetings, which is not in keeping with the spirit of the statute;
- the Office of the State Auditor began helping acequias meet the audit requirements necessary for bond sales in 2013;
- recent funding requests and appropriations for Acequia Commission operations and acequia infrastructure;

- the development of rules regarding audit requirements of acequias and other entities receiving state funding;
- current and potential changes to the statutory role of the Acequia Commission;
- consideration of long-term cycles in valuation of agricultural land;
- adjudication of acequia water rights;
- the process for requesting and securing funds for acequia systems; and
- the ISC recommends that the NMIWCF not be used to fund the administrative costs of the ISC or OSE.

Water Demand, Availability, Costs and Environmental Impacts Related to the Arizona Water Settlements Act (AWSA) and Proposed Gila River Diversion Projects

Craig Roepke, bureau manager, special water projects, ISC, submitted a report on the AWSA to the committee (available on the committee's web page) and briefly summarized the activities of the ISC since its last report to the committee. He noted that two studies of the effects of climate change on the flows of the Gila River projected reductions in flow of between six and eight percent of average mean flow and a 15 percent reduction in median flows. Mr. Roepke also reported that the ISC must notify the U.S. secretary of the interior by December 31, 2014 on whether or not the state intends to build a New Mexico unit. He also updated the committee on the current balance of the New Mexico Unit Fund, noting that of the approximately \$27 million the state has received under the AWSA, \$22 million remains in the fund.

Norm Gaume, former director of the ISC, noted that he served as director of the ISC when negotiation of the AWSA began, and he briefly outlined the formulation of the AWSA. Mr. Gaume explained that two-thirds of the \$100 million (in 2004 dollars) that then-U.S. Senator Pete Domenici secured under the AWSA could be used to fund water supply projects in the four southwestern counties of the state, with the remaining one-third used solely for the construction of a diversion project on the Gila River. He said that in current dollars, over \$90 million could be used on infrastructure improvements for drinking water, irrigation systems and conservation in that region. However, he said, he is concerned that the ISC will instead decide to use this money to fund a diversion project that will cost over \$1 billion. Mr. Gaume warned that this would be a mistake because median flows of the Gila average only 3,700 acre-feet per year (a/f/y), and thus, for 45 percent of the years, no diversions would be allowed; all available reservoir sites are leaky and thus impractical; taking into account bonding, operation and maintenance costs, users would have to pay \$47 million per year to produce 6,000 a/f/y; and National Environmental Policy Act of 1969 and Endangered Species Act of 1973 costs will be in the millions. Mr. Gaume closed by urging that the \$90 million be used for practical, cost-effective projects in the four-county region instead of on an unfeasible diversion project.

Mark Stone, Department of Civil Engineering, University of New Mexico (UNM), and David Propst, Department of Biology, UNM, presented their studies of Gila River streamflow and on the endangered spikedace.

Mr. Stone explained that the Gila River streamflow is wildly diverse, with huge differences between median and mean flows, in different months and in different years.

Consequently, there is wide geomorphic variability with many flood plain side channels, all of which drives important ecological processes such as cottonwood regeneration. In short, he explained, the various Gila River diversion scenarios being considered will likely reduce recruitment of riparian vegetation, such as cottonwoods, along the river.

Mr. Propst evaluated the effects of changed streamflow regimes on the life cycle of the spikedeace, noting that a diversion dam may limit the interchange between upstream and downstream spikedeace populations, and changes in the flow regime may increase the prevalence of invasive species. Consequently, the extinction risk of the spikedeace will have to be evaluated, and a long list of factors will have to be examined before a diversion structure can be constructed on the Gila, he said.

Questions and comments from the committee included:

- issues regarding access to information possessed by state agencies, including the ISC, and the nature of statutory protection of certain information; and
- potential flaws in computer models used by the ISC to develop AWSA scenarios.

Update on City of Las Vegas Dam Issues

Alfonso Ortiz, Jr., mayor, City of Las Vegas, updated the committee on a city water storage project in Las Vegas. He explained that construction should begin soon on expansion of Bradner Reservoir and dam, pointing out that the city has completed in four years a process that normally takes five years.

Ken Garcia, utilities director, City of Las Vegas, explained that the project involves increasing the height of Bradner Reservoir's dam from 70 feet to 120 feet, which should allow the city to increase water storage from 300 acre-feet to 2,100 acre-feet. Mr. Garcia noted that the project should be completed by 2016 and has received funding from multiple sources, including capital outlay expenditures and money from the Water Trust Board. He also noted that water rates were increased 60 percent in 2012 to help fund the city's share of the project.

Questions and comments from the committee included the following:

- sustainability of the watershed;
- most of the city's water comes from surface water, although there is some ground water pumping;
- the city is moving toward increased use of treated and recycled water;
- the city has acquired 250 acre-feet of additional water rights;
- some city water rights are in litigation;
- the seniority of the city's water rights;
- storing water in Storrie Lake and pumping it to Bradner Reservoir would have been too expensive; and
- 95 percent of the city's parks are watered with treated effluent.

Indian Water Rights Settlements and Issues

Representative Trujillo testified on the Aamodt water rights settlement. He began by providing the committee with a brief time line of the settlement. Representative Trujillo noted that the settlement is in the inter se process and that the OSE has mailed out more than 2,500 packets to non-pueblo water users. However, he pointed out, about 30 percent of the packets were returned to the OSE as undeliverable. Representative Trujillo also said that 800 objections to the settlement were filed in federal court. He discussed settlement terms, including options for non-pueblo well owners and that several major components of the settlement have not been completed, including OSE promulgation of settlement rules, completion of an environmental impact study and notification of all well owners.

Questions and comments from the committee included the following:

- some information about the settlements was limited at the time the legislature created the Indian Water Rights Settlement Fund;
- the number of objections to the settlement; and
- the legislature has appropriated funding to the settlement fund and can continue to do so.

Arianne Singer, managing attorney, OSE, addressed several questions regarding the Aamodt settlement. She explained that the State of New Mexico entered into the Aamodt settlement agreement, not the OSE, and that attempts were made to identify every water user in the settlement area such that notice was sent out to more than 7,000 people, not 2,500. Ms. Singer also noted that the number of objections filed, about 16 percent, is not necessarily high, particularly given the complexity of the settlement. She also addressed transfer of water rights below the Ottowi Gauge and Top of the World Farms and noted that the state has no obligation to compensate pueblo parties to the settlement. Ms. Singer explained that no one is being required to cap domestic wells and that, since most households use less than one-third a/f/y and owners can use up to one-half a/f/y, almost no one will have to reduce current usage.

Questions and comments from the committee included the following:

- involvement of the legislature in negotiating settlements before committing the state to funding them;
- tribal entities have been involved in each step of the settlement negotiation process;
- metering of pueblo water use;
- sharing of draft rules with settlement parties; and
- potential monthly water use fees.

Robert Mora, Sr., governor, Pueblo of Tesuque, discussed his pueblo's involvement in settlement negotiations and his impression that the representative is attempting to persuade the legislature not to fund the settlement. He explained that the settlement originally concerned the use of surface water, but that now has been completely overturned and everyone is talking about ground water. He emphasized the complexity of the allocation of water in the settlement and noted that sustainability is a key concern of the pueblo. He closed by noting that water belongs to all of us, not to any one of us.

Long-Term Funding for Forest and Watershed Restoration

Kent Reid, director, New Mexico Forest and Watershed Restoration Institute, and Laura McCarthy, director of conservation programs, New Mexico Office, The Nature Conservancy, provided the committee with an update on a presentation given to the committee at its July meeting, at which various entities discussed the need for long-term planning and funding for forest and watershed health. Since then, Mr. Reid and Ms. McCarthy noted, many stakeholders, including representatives from state and federal land management agencies, local government, private industry, the environmental community and state universities, met to develop a basic agreement on the need to promote forest and watershed health, protect water sources and reduce the risk of catastrophic fire. Mr. Reid and Ms. McCarthy explained that the group settled on an annual funding need of about \$61 million for watershed treatment, with about \$15 million of that coming from the state. However, Mr. Reid and Ms. McCarthy explained, the distribution of the money and its source have yet to be decided. They indicated that funding could come from several sources, including capital outlay, insurance premium tax revenue or water use charges, along with local, tribal and federal government sources and private industry. The committee requested that a bill be presented at the final meeting.

Questions and comments from the committee included the following:

- about seven million acres of watershed need to be treated over the next 20 years;
- biomass projects as an eventual destination for material harvested through watershed treatment are questionable without a long-term commitment to forest treatments;
- other potential uses for material harvested from watersheds;
- the use of state funding to treat federal land;
- the economic consequences of not treating watersheds, such as catastrophic wildfire, reduced water availability and unemployment, are potentially much greater than \$61 million;
- watershed thinning typically begins at the edge of forests and works inward;
- the inclusion of agricultural water use in contemplated water use fees; and
- watershed treatment is not cheap, but it needs to be done.

Proposed Changes to the Emergency Notification Requirements for Mining

Terrence Foreback, state mine inspector, explained the statutory requirements for mine operators to report accidents to the New Mexico Mine Emergency Operations Center within 30 minutes of their occurrence. However, Mr. Foreback noted, because New Mexico law currently does not differentiate between surface and underground mines, some of the definitions in statute are not well-suited to surface mines. He explained that there is confusion among surface mine owners on reporting requirements for accidents that do not involve rescue scenarios. Mr. Foreback also noted that there is some confusion regarding enforcement action by the state mine inspector in situations where mine operators did not report relatively minor accidents within 30 minutes.

Randy Logsdon, chair, Mining Safety Board, provided the committee with proposed changes to state mining statutes, explaining that the changes would differentiate between surface and underground mines. He also noted that surface mines and local resources are sufficient to

respond to most accidents that do not represent a reasonable expectation of death or serious injury. For example, Mr. Logsdon told the committee about a piece of equipment that caught fire at a surface mine in San Juan County. He said that because the driver exited the cab and was never in any danger, the mine did not notify the New Mexico Mine Emergency Operations Center until the next day, but it was fined \$10,000 for being out of compliance with the statute.

Mr. Foreback and Mr. Logsdon indicated that the Mining Safety Board is in unanimous agreement with the proposed statutory changes.

Questions and comments from the committee included the following:

- changing burdensome requirements for mine operators would make it easier for them to stay in compliance;
- some incidents do not merit a call within 30 minutes;
- safety training for mine operators;
- proposed changes would not alter federal agency oversight of some aspects of mine operations; and
- there appears to be little, if any, opposition to the proposed changes.

Santa Cruz Irrigation District — Santa Cruz Dam

Kenny Salazar, president, New Mexico Association of Conservation Districts, explained that silt has filled a significant portion of the reservoir of the Santa Cruz dam, reducing storage capacity. Mr. Salazar noted that the cost estimate for dredging silt out of the reservoir is approximately \$26 million but that raising the wall of the dam would cost about \$5 million. He indicated that the project to raise the wall is shovel-ready and that applications with the Water Trust Board and the U.S. Army Corps of Engineers have already been submitted. Mr. Salazar noted that the application process with the Water Trust Board was difficult to navigate.

Mike Martinez, program manager, U.S. Army Corps of Engineers, indicated that the U.S. Army Corps of Engineers views the Santa Cruz project as a good one and hopes to make it a priority. However, funding will not be announced until later in the year. Mr. Martinez also noted that the U.S. Army Corps of Engineers is asking New Mexico's congressional delegation to appropriate some of the necessary funding.

Questions and comments from the committee included the following:

- Santa Cruz Irrigation District taxes on acequia users has helped generate about \$85,000 per year to help pay some of the project costs;
- safety factors associated with raising the dam wall;
- demand for water is high, but dam operators can only release water two days per week, if they are lucky;
- raising the dam wall will allow operators to release water up to four days per week;
- debris filters will be installed around the lake to help mitigate future silt deposits;
- federal funding will be announced in December, with money becoming available in January or February 2015;
- the increase in the time it takes farmers to water small plots of subdivided land;

- the dam is structurally solid, it just does not hold the amount of water that it used to; and
- the dam project would be a good candidate for statewide capital outlay funding to address a critical need.

The committee recessed at 4:50 p.m.

Tuesday, October 7

Healthy Food in Schools Program

Pam Roy, executive director, Farm to Table, provided the committee with an update on the Healthy Food in Schools Program. She explained that the program secured \$240,000 to provide local produce to New Mexico schools statewide last year. Ms. Roy indicated that the program is growing, but some timing issues were encountered last year. She said that program managers will have better processes in place for next year. Ms. Roy also discussed plans to expand the program even further by tying it to math, science and engineering programs in schools and by studying food and agricultural programs that may already exist in schools.

Questions and comments from the committee included the following:

- juvenile correctional facilities are the best places to start trying to introduce fresh produce into the corrections system;
- Farm to Table is working to help farmers and farmers' markets to understand and navigate the government procurement process;
- the difference between pesticide-free produce and certified organic produce;
- federal nutritional requirements for school meals;
- farmers, particularly in northern New Mexico, are beginning to look toward crops that can be grown year-round, such as bok choy;
- requirements of school district contracts with farmers;
- the importance of educating farmers on the whole process, from harvest through handling, boxing and delivery;
- preparing farmers for audits; and
- the importance of teaching schoolchildren where their food comes from.

Temporary Water Use Permitting Process — Administrative Hearing Location Requirements

A.J. Olsen, partner, Hennighausen and Olsen, LLP, began by providing the committee with a brief history of administrative hearings for temporary water use permits. He explained that the practice of holding such hearings began in the 1960s, and that ground water use hearings began in the 1990s, noting that those hearings were held in the county where the permit was being sought or by agreement of all involved parties. However, Mr. Olsen said, the rules were changed in 2013 to state that hearings shall be held in Santa Fe. He said that Santa Fe is a long way to travel for some New Mexicans. Mr. Olsen proposed that all hearings be held in the county where a well is sought unless all parties agree to hold a meeting elsewhere.

Debbie Hughes, executive director, New Mexico Association of Conservation Districts, also discussed issues related to hearing protests for water use permits, which she said affect two statutes. First, she discussed the process for filing protests under the Water Use Leasing Act. Second, Ms. Hughes discussed issues with emergency and temporary water use permits, which she said allow for use of up to nine acre-feet of water. She explained that the protest process allows applicants to obtain permits, install pumps on existing water wells, sometimes without the well owners' knowledge, and begin using water for oil and gas exploration before the protest process can play out.

Chris Lindeen, managing attorney, Administrative Litigation Unit, OSE, explained that while the OSE does conduct impairment analysis of permit applications, sometimes multiple uses of one well are better for the aquifer than multiple wells. He also emphasized that the OSE tends to be very conservative in approving permits, as checks need to be in place on the process. Mr. Lindeen also explained that since 1998, the OSE has had discretion on hearing locations. He said that although the legislature provided the OSE with broad power to determine hearing locations, the majority of hearings actually take place outside of Santa Fe. He noted that during the budget crisis, all hearings were conducted in Santa Fe, but since then, that has not been the case.

Questions and comments from the committee included the following:

- the OSE has two hearing examiners, both based in Santa Fe;
- many cases are resolved before a hearing actually takes place;
- no hearings have been held in Santa Fe against the request of the parties involved;
- Mr. Olsen's solution would remove all discretion from hearing examiners;
- the status of various hearings on cases currently under way; and
- the Water Use Leasing Act may be more problematic than it is part of the solution.

Regional Water Association Proposal and Association Issues

Rick Martinez, director of business development, New Mexico Finance Authority (NMFA), began by saying that issues relating to mutual domestic water consumers associations (MDWCAs) have been developing over the past eight years.

Ramon Lucero, president, El Valle Water Alliance, discussed legislation allowing the creation of regional water utility authorities. He explained that the process began several years ago and that a recent memorial directed the Department of Environment (NMED) and the OSE to develop criteria for regional water associations.

Adam Leigland, director of public works, Santa Fe County, indicated that the framework that has been developed is a good start toward legislation.

Robert Crowley, Andy Philo and James Hayhoe began by providing the committee with a brief history of MDWCAs, noting that they were created by the Sanitary Projects Act to address health impacts due to unsafe drinking water supplies in rural New Mexico. They noted that there are currently more than 200 MDWCAs in New Mexico, and while they almost all began as small associations with fewer than 100 members, some now have more than 1,000 members.

However, Mr. Crowley, Mr. Philo and Mr. Hayhoe explained, state oversight of MDWCAs is performed by several agencies and is uneven. For example, they noted that the attorney general oversees compliance with state law, while the NMED oversees water and wastewater purity and the NMFA has jurisdiction over state loans and grants.

Mr. Crowley, Mr. Philo and Mr. Hayhoe went on to discuss acquisition of the Picacho Hills Utility Company by the Dona Ana Mutual Domestic Water Consumers Association (DAMDWCA). They contended that the DAMDWCA has taken steps to limit the influence of the Picacho Hills Utility Company on the DAMDWCA board, noting that they have filed several formal complaints with the attorney general for violations of the Open Meetings Act and with the NMED regarding lack of board governance. Mr. Crowley, Mr. Philo and Mr. Hayhoe also discussed several other complaints about the DAMDWCA, such as the lack of a definition of "members", customer service and billing issues and the inability of members to have input.

Mr. Crowley, Mr. Philo and Mr. Hayhoe suggested that the legislature revisit the Sanitary Projects Act and amend it to place MDWCAs with more than 1,000 members under the oversight of the Public Regulation Commission.

Approval of Minutes

On a motion made, seconded and passed, the minutes of the committee's September meeting were approved as submitted.

There being no further business, the WNRC adjourned at 12:05 p.m.